S.B.CIVIL WRIT PETITION NO.491/1995
(RSRTC, Jaipur & Anr. v. Sohan Singh & Anr.)

DATE OF ORDER :: 23rd January, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Ms. Aditi Lodha, for the petitioners.
Mr. D.K.Parihar, for the respondent workman.

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By this petition for writ a challenge is given by the employer Rajasthan State Road Transport Corporation to the award dated 7.6.1994 passed by Industrial Tribunal, Bikaner in Industrial Disputes Case No.69/1990.

In brief, facts of the case are that the appropriate government under its notification dated 31.3.1990 referred an industrial dispute to the Industrial Tribunal, Bikaner in terms as to whether the Divisional Manager, Rajasthan State Road Transport Corporation, Bikaner was right in imposing the penalty of two annual grade increments with cumulative effect and for forfeiting the amount of wages except subsistence allowance for the period of suspension, if not then for what relief the workman is entitled. While answering the reference the Industrial Tribunal held that under clause 36 of the Rajasthan State Road Transport Corporation Standing Orders no penalty of stoppage of annual grade increments with cumulative effect is prescribed, therefore, the imposition of such penalty is illegal. Learned Industrial Tribunal also held that imposition of major penalty is illegal

being imposed without supplying a copy of inquiry report to the delinquent employee and also being disproportionate to the delinquency for that the workman was found guilty, accordingly, the penalty of stoppage of two annual grade increments with cumulative effect and forfeiture of wages except subsistence allowance was substituted by penalty of stoppage of two annual grade increments without cumulative effect. Being aggrieved by the same this petition for writ is preferred.

While giving challenge to the award impugned it is contended by Miss Aditi Lodha, counsel for the Rajasthan State Road Transport Corporation that (1)the Industrial Tribunal erred while holding that no penalty of stoppage of annual grade increments with cumulative effect is prescribed under clause 36 of the Standing Orders; (2)the Industrial Tribunal erred while holding that non supply of inquiry report before imposing penalty of stoppage of two annual grade increments with cumulative effect under order dated 13.4.1979 was illegal; and (3)the learned Tribunal erred while holding that the penalty imposed disproportionate though the workman was found guilty for carrying ticketless travellers.

Learned counsel for the respondent workman urged that the award impugned does not require any interference of this Court as the imposition of

penalty of stoppage of two annual grade increments with cumulative effect amounts to reduction in rank and such a major punishment could not be imposed without supplying a copy of the inquiry report to the delinquent employee. It is asserted by counsel for the respondent workman that irrespective of the judgment of Hon'ble Supreme Court in the case of Managing Director,ECIL, Hyderabad v. B.Karunakar, (1993)6 JT 1, the employer was required to supply a copy of the inquiry report to ensure compliance of principles of natural justice. According to the counsel for the respondent workman the inquiry report being used by the disciplinary authority as an adverse material against the workman should have been supplied to the workman seeking his explanation with regard to the findings given.

Counsel for the respondent workman also defended the award impugned on the count that the Industrial Tribunal after considering the evidence available on record and looking to the nature of the misconduct reached at a conclusion that the punishment imposed was disproportionate to the guilty established and such finding is not required to be interfered in extraordinary as well as supervisory jurisdiction of this Court.

Heard counsel for the parties.

The finding of the Industrial Tribunal to the effect that no penalty of stoppage of annual grade increments is given under the relevant Standing Orders is erroneous in view of the judgment of this Court in the case of Rajasthan State Road Transport Corporation v. Shanti Swaroop (SBCWP No.599/1995, decided on 19.1.2007), holding therein that the penalty of stoppage of annual grade increments being equal to the penalty of reduction in the time scale could have been imposed under the Rajasthan State Road Transport Corporation Standing Orders, consequently, the first contention of the learned counsel for the petitioners deserves acceptance.

The other contention of counsel for the petitioners is that there was no need to supply copy of the inquiry report to the workman as the penalty was imposed prior to 30.11.1990. To substantiate the contention learned counsel has placed reliance upon a judgment of Hon'ble Supreme Court in the case of Managing Director, ECIL (supra) wherein it was held that in the matters where disciplinary proceedings came to an end and the penalty was imposed prior to 20.11.1990 there was no need to supply copy of the inquiry report before imposing a major penalty. Learned counsel has also placed reliance upon a judgment of Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation v. Motilal, Civil Appeal No.3750/1991, decided on 17.2.1994,

wherein too while considering the case of an employee of the petitioner Corporation Hon'ble Supreme Court held that prior to November 20, 1990 there was no need to supply a copy of the inquiry report to the delinquent employee of the Corporation before imposing a major penalty. The judgment given by Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation v. Motilal (supra) was relating to an employee of the present petitioners and that covers the issue in question, therefore, I do not find any merit in the contention of counsel for the respondent workman that irrespective of judgments of Hon'ble Supreme Court in the case of the Managing Director, ECIL (supra) there was a need to supply a copy of the inquiry report to the delinquent employee before imposing a major penalty to ensure compliance of principles of natural justice. In view of the law laid down by Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation v. Motilal (supra) the finding given by the Industrial Tribunal under the award impugned that non-supply of the inquiry report makes the order imposing major penalty bad, is apparently erroneous.

I also found force in the contention of counsel for the petitioners that the Industrial Tribunal erred while holding the penalty imposed disproportionate to the guilty proved. The respondent workman was found guilty for carrying ticketless

travellers and that is quite a serious misconduct. Hon'ble Supreme Court in the case of Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma, JT 2001(10) SC 12, while dealing with the same misconduct held that though under section 11-A of the Industrial Disputes Act, 1947 the labour court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously and when the main duty or function of the conductor is to issue tickets, collect fare and then deposit the same with the road transport corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal.

In the instant matter too the respondent workman was found guilty for carrying ticketless travellers, as such the imposition of penalty of stoppage of two annual grade increments with cumulative effect cannot be held disproportionate to the misconduct for that the workman is found guilty. The Industrial Tribunal, therefore, erred while interfering with the penalty imposed upon the respondent workman.

In result, this petition for writ deserves acceptance. The same, therefore, is allowed. The award impugned passed by the Industrial Tribunal, Bikaner in Industrial Disputes Case No.69/1990, titled as Shri Sohan Singh v. Divisional Manager, Rajasthan State

Road Transport Corporation, Bikaner, dated 7.6.1994 is quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.